

APPLICATION NO	PA/2013/0353
APPLICANT	Mr & Mrs N Poole
DEVELOPMENT	Planning permission for change of use of existing tea room to a mixed use (Classes A3 and A4) as a tea room with drinking establishment
LOCATION	46 High Street, Messingham
PARISH	MESSINGHAM
WARD	Ridge
CASE OFFICER	David Wordsworth
SUMMARY RECOMMENDATION	Grant permission subject to conditions
REASONS FOR REFERENCE TO COMMITTEE	Good Practice Guide (application by a member of the council – Councillor Poole) Third party request to address the committee

POLICIES

National Planning Policy Framework: Paragraph 14 states that there is a presumption in favour of sustainable development which, for decision-making, means approving development proposals that accord with the development plan without delay and, where the development plan is absent, silent or relevant policies are out of date, granting permission unless:

- any adverse impacts of doing so would significantly outweigh the benefits; and
- specific policies in this framework indicate development should be restricted.

Paragraph 17 outlines a set of core land use planning principles that should underpin decision-making, including:

- to promote mixed use developments and encourage multiple benefits from the use of land in urban and rural areas; and
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable.

Paragraph 18 states that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

Paragraph 23 – in drawing up plans local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality.

Paragraph 196 – the planning system is plan-led. Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

Paragraph 197 – in assessing and determining development proposals local planning authorities should apply the presumption in favour of sustainable development.

North Lincolnshire Local Plan: Policies S6 (Small Local Centres and Corner Shops) and DS1 (General Requirements).

- **North Lincolnshire Core Strategy:** Policy CS14 (Retail Development) requires local centres/corner shops to fulfil their role in providing vital day-to-day shopping facilities for local communities in both urban and rural areas.

CONSULTATIONS

Highways: No objections or conditions.

Environmental Protection: Previous complaints regarding noise nuisance from activities within the premises due to the movement of furniture have now been resolved. The tea room does not presently provide live music. However, due to the close proximity of local residents, it is predicted that if it did it would generate complaints of noise disturbance. The premises licence for this establishment does not currently permit entertainment but under recent changes to the licensing regime it may still be undertaken. It is therefore suggested that should planning permission be granted a condition be attached preventing the occurrence of live music/singing within the premises in order to protect the residential amenity of local residents nearby.

PARISH COUNCIL

No objections or comments.

PUBLICITY

Neighbouring properties have been notified and a site notice posted. Objections have been received on the following grounds:

- Pooley's is too close to the adjacent property of 48 High Street. Although detached, it is only 4.5 inches away.
- Noise disturbance is caused by furniture being dragged across the floor and glasses being cleared away.
- There is no sound-proofing to prevent noise disturbance which happens six nights a week.
- Pooley's is surrounded by residential dwellings to the side, rear and directly across the road.
- Noise disturbance is caused by taxis with their engines running for 15 minutes at a time which vibrates the adjacent house, car doors banging and car horns sounding, people shouting and kicking against the wall whilst waiting to be picked up.

- Customers to Pooley's use The Horn Inn's car park causing their patrons to park on the street. There have been three accidents since Christmas.
- Pooley's customers attempt to park on the nearby petrol station and repair garage which is now chained off to prevent this occurring. However, cars still park across the dropped kerbs and blocking drives.
- There is a huge difference between an attractive and sedate tearoom and an all intents and purpose public house. Neighbours to this premises most certainly did not choose to live next to a drinking establishment; it has been thrust upon them.
- There are three other fine pubs within the village so why is another pub really required?
- Surely the application should be for A4 use as there is little difference between Pooley's and The Horn Inn.
- Many customers come from out of the village so why should Messingham provide this premises for the benefit of non-residents?
- The vice-chairman of the town council stated that there have been traffic problems on High Street for many years. How can this not be made worse when a pub is allowed to open with no car park? During the summer we cannot open the windows due to noise and the problem of antisocial behaviour such as urinating and verbal abuse.
- Stag nights and hen parties have also caused problems when leaving.
- The property is incompatible with its surrounding neighbourhood which is residential.
- It is the human right to a certain quality of life which is now being adversely affected by the opening of a bar which residents have had no notification of from North Lincolnshire Council.
- Are meals served in the evening when it is being run as a public house, so the liquor licence hasn't been complied with?
- noise/antisocial behaviour/stag/hen parties cause noise when leaving which impact on residents' privacy and cause noise nuisance
- Why is another bar needed when there are three within 100 metres?
- Democracy should mean the majority of objectors should be satisfied.
- A condition restricted the use to 5.30pm in the interests of amenity.
- Why is there no smoking shelter?
- Nearby residents suffer fumes from taxis.
- Property values are affected.
- The 90% food/10% drinks statement is ridiculous.

- This has all been planned: first the hours changed until 11pm then the licence, and opening without planning permission, all with no notification to neighbours.
- The applicants have given no thought to neighbours' quality of life.

Comments have been received concerning the applicant's position within the council and trading without the relevant consents which has led to discontent and the high number of objections being received. These comments are not material planning considerations.

Letters of support have been received which can be summarised as follows:

- pleasure to enter a properly run establishment
- friendly conversation and an excellent pint can be enjoyed, particularly as there is no TV, music, juke box, fruit machine or bad language
- clean and well maintained premises
- excellent sound insulation due to old stone walls
- providing local employment
- suggestions of noise disturbance are ludicrous
- there are noise and traffic problems caused by the Horn Inn and the fish and chip shop which neighbours seem to have accepted
- Pooleys is an asset to the village
- atmosphere is calm and relaxed
- never witnessed excess noise or disturbance from the premises
- the clientele are very respectful of residents and sensitive to any noise made when leaving the premises
- the business brings people into area who also spend their cash in the village
- range and quality of food and beer is excellent

ASSESSMENT

Planning permission is sought to change the use of an existing tearoom (Class A3 of the Use Classes Order) to a mixed use of tearoom with drinking establishment (Classes A3 and A4) at 46 High Street, Messingham. The name of the premises is Pooley's which was first granted planning permission in 2005 (PA/2005/0925). The premises had previously been used as a hairdressing salon. Several planning permissions have been granted since then to extend the premises and the opening hours so that the business can operate between the hours of 9am and 11pm (Monday to Sunday) (PA/2007/1302). In 2010 the owners of the business applied for and were granted a liquor licence to allow the sale of alcoholic drinks.

The front of the premises stands on the back edge of the footpath of Messingham High Street and although the building appears to be a terraced property, when viewed from the front it is physically connected to the fish and chip shop to the north of the site and has a very small gap between the southern elevation of the building and the northern elevation of number 48, a detached residential property to the south. Whilst there is an element of off-street parking to the rear of the tearoom with access from Butterwick Road, these parking bays are not associated with the existing or the proposed use and are currently only used by tenants of the town houses and flats on the site.

The key issues in determining this application are whether the proposal complies with national and local policies, whether it will adversely affect the residential amenity and living conditions of occupants of adjacent properties by virtue of additional noise and disturbance, and whether it will adversely affect highway safety due to traffic generation, lack of off-street car parking provision or on-street parking problems.

Paragraph 196 of the National Planning Policy Framework requires decisions on planning applications to be made in accordance with the development plan unless material considerations require otherwise. With respect to the development plan, this consists of the North Lincolnshire Local Plan and the North Lincolnshire Core Strategy. The application site is located on Messingham High Street which does not benefit from a district or town centre policy allocation that other settlements of a similar size, such as Epworth, Crowle or Kirton-in-Lindsey, benefit from. However, the High Street in Messingham does contain a variety of town and district centre uses such as shops (Class A1) and units selling hot food (Class A3) as well as several public houses (Class A4) and hot food takeaways (Class A5), which cumulatively provide a wide range of town and district centre uses.

Under the North Lincolnshire Core Strategy that was adopted in June 2011, policy CS14 states:

'5. Local Centres/Corner Shops

To fulfil their role in providing vital day-to-day shopping facilities for local communities in both urban and rural areas, the retention and enhancement of Local Centres and corner shops will be supported.

In supporting the vitality and viability of North Lincolnshire's network of town centres, it will be important to ensure that:

- The existing retail character and function of centres is safeguarded. Development that detracts from vitality and viability of the area's town centres will be resisted.
- New town centre development complies with the sequential approach to site selection, which prioritises development in existing centres, then edge-of-centre sites, and only then out of centre sites that are accessible by a choice of means of transport.
- The scale and type of development reflects the centre's existing and proposed function and its capacity for new development.
- The retail function of town centres are protected by way of restricting non-A1 uses particularly within the defined town centres boundaries.

- A balanced range of facilities and uses are encouraged within district and local centres in keeping with their size and function to meet the every day needs of the local population. Local shops located within smaller settlements, in particular in rural areas will be protected where they are important to the day-to-day needs of people.
- Shopping facilities are accessible by a range of means including by car, walking, cycling and public transport.
- New developments are of an appropriately high quality design, particularly in the town centre.'

In assessing the proposal against the land use policies within the development plan it is apparent that the mixed use as proposed is acceptable in terms of its location. What must also be considered is the proposal's impact upon other uses and occupiers of those properties which include residential units. On the same site of 46 High Street and under the ownership of the applicants is one flat above the tearoom, one flat to the rear of the tearoom at ground floor level only and a block of three town houses within the rear courtyard. To the north of 46 High Street and physically attached to the building is an existing fish and chip shop which is also under the ownership of the applicants. To the south of the site is 48 High Street which is a detached two-storey house with a narrow gap between its northern elevation and the southern elevation of 46 High Street which measures approximately 10-12 centimetres. Other residential properties exist on the opposite (eastern) side of the road from the premises and also to the rear of the existing town houses on Butterwick Road (to the west).

Numerous objections have been received regarding noise disturbance from the premises late at night both from within the existing premises and due to people leaving the premises and causing disturbance in the vicinity. Such disturbances and activity attributed to the proposed use outside of the site cannot be controlled through the planning system and separate legislation through Environmental Protection and the powers of the police are in force to prevent these instances occurring. The existing tearoom has planning permission to open until 11pm and planning permission is not sought to increase the hours of opening that are already permitted by the existing permission. With regard to noise disturbance to adjacent properties, for instance 48 High Street to the south, objections received state that furniture being dragged across the floor and glasses being cleared away creates noise disturbance at unsocial hours. One of the objections also states that there is no soundproofing to prevent noise disturbance.

The Environmental Protection team has been consulted on the application and has stated that previous complaints regarding noise nuisance from activities within the premises due to the movement of furniture have now been resolved. It is also recommended that a condition is attached regarding the prevention of live music and singing within the premises. On the issue of soundproofing condition 3 attached to the previous planning permission under reference PA/2007/1302 required details of a soundproofing scheme to be submitted and approved in writing by the local planning authority. The details of the soundproofing scheme were submitted which were advised upon by Building Control as a consultee. These details were found to be acceptable and the condition was discharged.

Recently details of the implementation of the soundproofing scheme were requested through a Freedom of Information request (Fol). A letter from the joiner who implemented the soundproofing scheme was received confirming implementation. The premises has been visited by officers from the council's Planning and Building Control teams and the

Building Control Officer confirmed that the building complies with Building Regulations at the current time and is acceptable for the proposed use. On the visit it was noted that the tables and chairs had rubber feet to prevent noise when furniture is moved.

The soundproofing scheme was implemented which involved soundproofing the party wall between the bar area and the existing rear flat and also the party floor above the bar area and the flat above. These were the only areas that required soundproofing under Building Regulations because they formed the boundary of a commercial use adjacent to a residential use. The other areas of the tearoom did not require soundproofing because the use involved a commercial use adjacent to another commercial use such as in the case of the fish and chip shop to the north. With regard to the detached dwelling of 48 High Street to the south, the adjacent wall of the tearoom has a gap and is not a party wall so did not require soundproofing.

With regard to the issue of highway safety and parking provision, the Highways department raises no objections to the proposal and does not require any off-site parking to be provided.

Consideration has been given to the other issues raised by publicising the application as follows.

Comments received regarding an unauthorised use of the premises for two years and comments regarding property values are not a material consideration. Ancillary uses of premises do not require planning permission if the scale and nature of the use is small enough so as not to constitute a material change of use. If a licence is granted (under different legislation) it does not automatically follow that a change of use has occurred. Advice from the Planning department to the applicant on this matter has been consistent. Smoking shelters are not a mandatory requirement for drinking establishments. Meals can be bought at the premises but must be pre-ordered. A limited cold buffet is available outside of meal times and can be bought without pre-ordering.

Need or demand for a drinking establishment in the vicinity is not a matter that would be given weight in considering the merits of a proposal. Key considerations include planning policy, residential amenity and quality of life, and highway safety. It is felt that none of the material issues raised justify a refusal of planning permission, particularly given the consultation responses from other council departments.

RECOMMENDATION Grant permission subject to the following conditions:

1.

The development must be begun before the expiration of three years from the date of this permission.

Reason

To comply with section 91 of the Town and Country Planning Act 1990.

2.

The development hereby permitted shall be carried out in accordance with the following approved plans: PP/13/01, PP/13/02, PP/13/03, PP/13/04 and PP/13/05.

Reason

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

3.

Performance of singing, music or use of musical instruments, including but not limited to guitars, drums, pianos or keyboards, shall not be permitted within the premises.

Reason

To protect the residential amenity of occupiers of adjacent properties in accordance with policy DS1 of the North Lincolnshire Local Plan.

Reasons for approval

The council, as local planning authority, has had regard to the relevant policies of the development plan as set out below and considers that, subject to compliance with the conditions attached to the permission, the proposed development would be in accordance with the development plan, would not materially harm the character of the area nor the living conditions of neighbouring occupiers, and would be acceptable in all other planning considerations. The council has taken into account all other matters, none of which outweigh the considerations that have led to its decision. The policies taken into consideration in the determination of this application are

Informative

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraphs 186 and 187 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.



Title: PA/2013/0353

Drawn by: Sue Barden

Date: 21/05/2013

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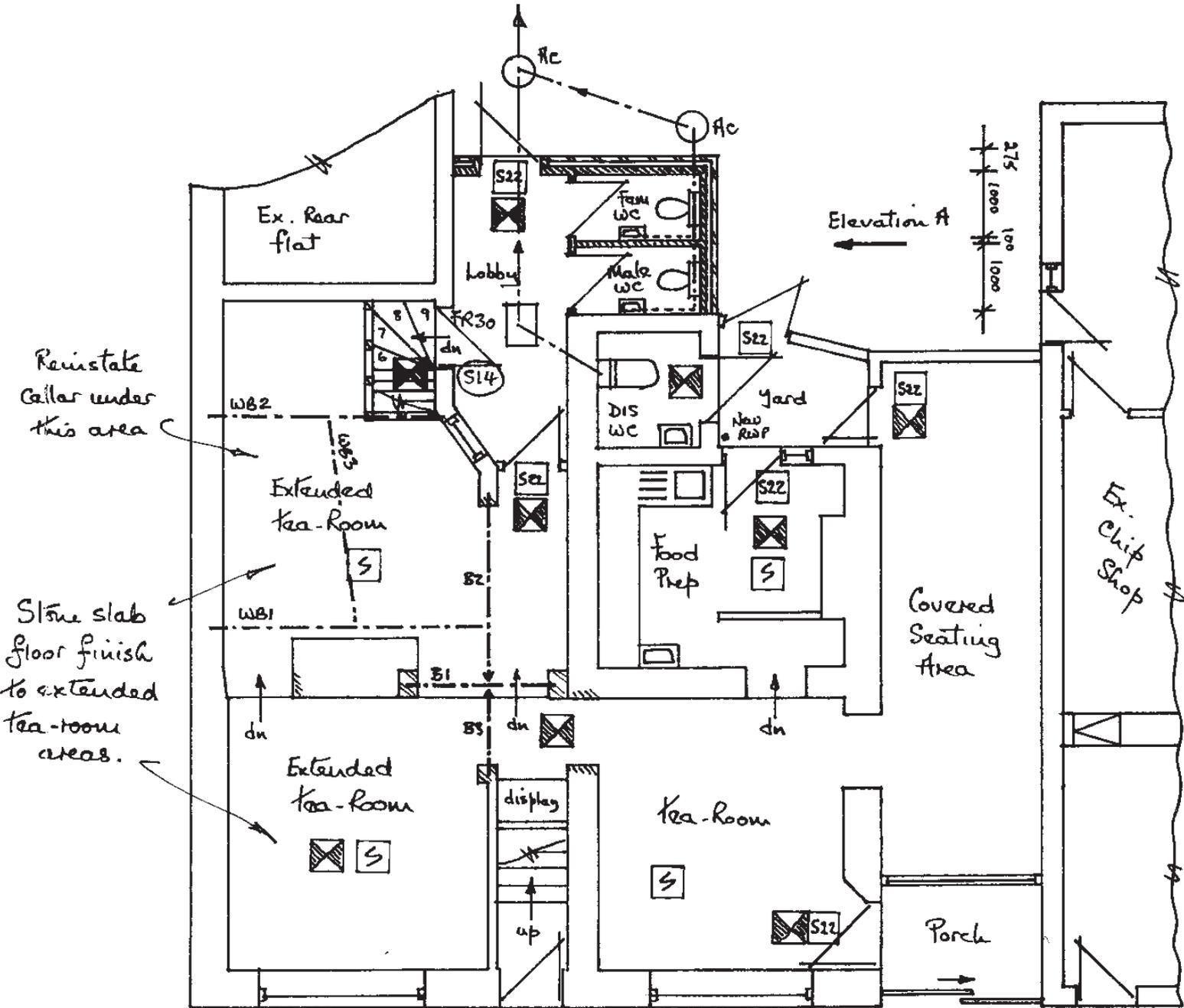
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Director of Places
Peter Williams
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PA/2013/0353 LAYOUT PLAN

NOT TO SCALE



EXISTING GROUND FLOOR

& FIRE PLAN

DEVELOPMENT CONTROL	
28 MAR 2013	
DATE RECEIVED	
Referred To	